

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
December 5, 2000 Session

ALPHA FINANCIAL SERVICES, INC. v. KARL KINDERVATER

**Direct Appeal from the Circuit Court for Hamilton County
No. E2000-01425-COA-R3-CV W. Neil Thomas, III, Judge**

FILED JANUARY 22, 2001

No. E2000-01425-COA-R3-CV

CHARLES D. SUSANO, JR., J., concurring.

I concur in so much of Judge Franks' majority opinion as finds that the trial court erred in granting the plaintiff summary judgment. I do so, not because I believe, as the majority does, that the affidavits submitted by the defendant, Karl Kindervater, make out a genuine issue of material fact as to the amount of the defendant's debt; but rather because I believe the material submitted by the plaintiff does not clearly show the amount of the indebtedness due under the continuing guaranty. In my opinion, the meaning and import of some of the documents submitted by the plaintiff in support of its affidavits are not discernible. I am unable to look at these documents and find in them support for some of the figures asserted in the plaintiff's affidavits. It may be that one knowledgeable with respect to these documents can explain them in a way that will clearly show that the figures stated by the plaintiff's witness are accurate; but I am unable, with my untrained (in this field) eye, to make this determination.

I would hold that the material submitted by the plaintiff, without further illuminating testimony, is not sufficient to trigger the defendant's obligation to show a genuine issue of material fact. See *McCarley v. West Quality Food Service*, 960 S.W.2d 585, 588 (Tenn. 1998). By way of dictum, I would state that I do not agree with the majority's observations with respect to the legal import of the defendant's "I dispute" language in his affidavits.

I concur.

CHARLES D. SUSANO, JR., JUDGE